


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2001-305-W - ORDER NO. 2001-1144

DECEMBER 27, 2001

IN RE:	Application of Duke Energy Corporation and)	ORDER APPROVING
	Duke Water Systems for Approval of)	TRANSFER OF WATER
	Transfer of Water and Transmission Systems.)	AND TRANSMISSION
)	SYSTEM



This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of Duke Energy Corporation and its division, Duke Water Systems ("Duke" or "Company") requesting approval of the sale and transfer of Duke's water collection and transmission system located in Anderson County, South Carolina. Duke filed its Application with the Commission pursuant to S.C. Code Ann. Section 58-27-1300 (Supp. 2000) and 26 S.C. Code Regs. 103-704 (Supp. 2000).

By its Application, Duke seeks the Commission's approval for the sale and transfer of the water collection and transmission system and all real and personal property used for the collection, treatment, and transmission of potable water, serving retail customers in the City of Anderson, South Carolina and wholesale customers in Anderson County, South Carolina to the City of Anderson ("City") and the Anderson County Joint Municipal Water System ("ACJMWS") (collectively referred to as "Purchasers"). Duke proposes to sell the retail system to the City for \$15.58 million and to sell the wholesale system to ACJMWS for \$47.92 million dollars, for a total sales price of \$63.5 million dollars. After the sale is consummated, the City intends to increase retail water rates by

37.5% over a period of five years, or 7.5% per year, and ACJMWS intends to increase wholesale water rates by 27.5% over a period of five years, or 5.5% per year. It is further anticipated that all wholesale customers will enter into long term wholesale contracts that will include the wholesale rate increase.

The Commission's Executive Director instructed Duke to publish a prepared Notice of Filing in a newspaper of general circulation in the area affected by the Company's Application and to notify all affected customers of the pending Application. The purpose of the Notice of Filing was to inform interested persons of the manner and time which to file pleadings in order to participate in the docket concerning the instant matter. A Petition to Intervene was filed on behalf of the South Carolina Department of Health and Environmental Control ("SCDHEC").

Subsequent to filing its Petition to Intervene, SCDHEC filed a letter withdrawing its intervention in this docket. Duke then filed the verified testimony of Robert Sean Trauschke, Director of Business Unit Finance of Duke Energy, and requested that the Commission consider the Application on an expedited basis.

S.C. Code Ann. Section 58-27-1300 (Supp. 2000) provides in part

No electrical utility, without the approval of the commission and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them, except that any electrical utility which has utility property, the fair market value of which is one million dollars or less, may sell, assign, transfer, lease, consolidate, or merge this property without prior approval of the commission. The commission may, at its discretion, hold a hearing on the request of an electrical utility to sell, assign,

transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them. ...

26 S.C. Code Regs. 103-704 (Supp. 2000) provides that “no existing public utility supplying water to the public ... shall hereafter sell, acquire, transfer, begin the construction or operation of any utility system, or any extension thereof, by the sale of stock or otherwise, without first obtaining from the Commission a certificate that the sale, transfer, or acquisition is in the public interest, or that public convenience and necessity require or will require construction or operation of any utility system, or extension.” Although 26 S.C. Code Regs. 103-504 (Supp. 2000) also provides for notice and due hearing, 26 S.C. Code Regs. 103-501(3) (1976) provides that “in any case where compliance with any of these rules and regulations introduces unusual difficulty, such rules or regulations may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest.” This Commission notes that it has previously considered applications in the context of its weekly agenda session when the applications have no other parties involved and the application is not contested. The Commission finds that a waiver of the hearing requirement in the instant matter is in the public interest.

On Tuesday, December 11, 2001, the Commission in its regularly scheduled agenda session, with court reporter present, discussed and considered Duke’s Application and the verified testimony submitted by Duke in support of the Application. Based upon the Commission’s consideration of the Application and verified testimony, the Commission makes the following Findings of Fact:

1. Duke is a public utility subject to the jurisdiction of the Commission and is currently operating a water collection, treatment, and transmission system in Anderson County, South Carolina. Duke's retail system serves retail customers in the City of Anderson and serves the following wholesale customers: Powdersville Water Company, Big Creek Water and Sewerage District, Hammond Water and Sewer Company, Broadway Lake and Sewer District, Starr-Iva Water and Sewer Company, Homeland Park Water and Sewer District, West Anderson Sewer Company, Sandy Springs Water Company, Clemson University, U.S. Utilities, and the Towns of Clemson, Pendleton, and Williamston and other customers in the surrounding areas.

2. Duke desires to sell and transfer the water collection and transmission system serving retail and wholesale customers and all real and personal property used for the collection, treatment, and transmission of potable water, not limited to all raw intake; all accessories and appurtenant fixtures to water transmission and distribution service lines and water service equipment; in and to all permanent and temporary easements for constructing and maintaining water lines; all easements, leases, permits, contract rights and/or rights-of-way for service lines, connections and equipment located in or connecting to the Water System; all apparatus, real property equipment and water maintenance supplies and all other property, equipment, rights, franchises, territories, and privileges of the Water System.

3. ACJMWS is the purchaser of the wholesale system, which lies outside the City but within Anderson County. ACJMWS was created pursuant to Title 6, Chapter 25,

Code of Laws of South Carolina, and is authorized to provide water collection, treatment, and transmission services as contemplated within Duke's Application.

4. The City is the purchaser of the retail system, which is located both within and without the municipal limits of the City.

5. Duke will sell the retail system to the City for \$15.58 million dollars and will sell the wholesale system to ACJMWS for \$47.92 million dollars, for a total sale price of \$63.5 million dollars.

6. As Purchasers of the system, ACJMWS and the City, have represented to Duke that they are able to provide water services and maintain the Water System. Duke is informed and believes that the Purchasers will retain certain experienced operators who are familiar with the Water System and the treatment and distribution of water and who are presently employed by Duke.

7. The Purchasers have the ability to provide continued adequate and affordable water service to the residents of Anderson County. The Purchasers have filed detailed and comprehensive business plans with SCDHEC, and those business plans reveal that the Purchasers have the expertise, planning, personnel, financial ability, and experience to operate the Water System.

Based upon the above Findings of Fact, the Commission concludes that the requested sale and transfer should be approved. Duke has developed a highly efficient and reliable water system that it has successfully operated for a number of years in Anderson County. However, the sale and transfer of the system as proposed by Duke will promote regional water use and efficient aggregation of retail water service.

IT IS THEREFORE ORDERED THAT:

1. The Application of Duke to sell and transfer its water collection, treatment, and transmission systems, and associated properties, rights, and privileges to The City of Anderson and ACJMWS is approved. However, the herein authorized approval for the sale and transfer of the Water System is contingent upon Duke filing signed contracts of sale between Duke and The City and Duke and ACJMWS.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)